BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of	)	
	)	
Application of SBC Communications,	)	
Inc. Pursuant to Section 271 of	)	
the Telecommunications Act of 1996	)	CC Docket No. 97-121
to Provide In-Region, InterLATA	)	
Services in Oklahoma	)	

REPLY COMMENTS OF THE ATTORNEYS GENERAL OF DELAWARE, FLORIDA, IOWA, MARYLAND, MASSACHUSETTS, MISSISSIPPI, MISSOURI, NEW YORK, NORTH DAKOTA, OKLAHOMA, UTAH, WEST VIRGINIA AND WISCONSIN

The Attorneys General of Delaware, Florida, Iowa, Maryland, Massachusetts, Mississippi, Missouri, New York, North Dakota, Oklahoma, Utah, West Virginia and Wisconsin (the Attorneys General) submit these reply comments in response to the request of the Federal Communications Commission (Commission) for comments regarding the application by SBC Communications, Inc. (SBC) for authorization under Section 271 of the Communications Act, as amended by the Telecommunications Act of 1996 (the 1996 Act), to provide in-region, interLATA service in the State of Oklahoma.

INTRODUCTION

SBC has filed an application for authorization to provide in-region, interLATA service in the State of Oklahoma, pursuant to section 271 of the 1996 Act. If the application is granted, SBC will become the first Bell Operating Company (BOC) authorized to provide in-region interLATA service. Even though SBC's application directly affects only Oklahoma, the Attorneys General submit these

comments because the FCC's decision in this case is likely to set an important precedent for future applications under section 271 of the 1996 Act.

In considering SBC's application, the Commission will likely establish the framework it will follow for subsequent section 271 applications. The procedures and standards adopted in this docket should shape the process by which, consistent with the intent of the 1996 Act, BOCs across the country will seek authority to begin offering in-region, interLATA service.

SBC's and other BOCs' entry into their in-region long distance markets should enhance consumer interests by increasing competition in those markets, so long as the BOCs are prevented from obtaining and exploiting unfair advantages from their dominant positions in their local exchange markets. However, the issue to be addressed in this proceeding is not whether SBC should be authorized to enter the interLATA market in Oklahoma, but when that authority should be granted. While aware of the benefits of increased interexchange competition, Congress did not authorize immediate BOC entry into those markets in the 1996 Act. Instead, the Act holds out long distance authority as an incentive to induce BOC cooperation in the difficult task of opening the local exchange markets to competition.

The fundamental policy question that the Commission must resolve in this proceeding is whether SBC has proved that it has discharged all its market-opening responsibilities in Oklahoma such that the 1996 Act's goal of introducing effective competition into local exchange markets has been achieved in the State.

The Commission must also consider the extent to which it can rely upon the consultation provided by the Oklahoma Corporation Commission in this proceeding. If the Oklahoma Commission has fallen short in its review of SBC's compliance with the competitive checklist set forth in section 271(c)(2)(B) of the 1996 Act, it is incumbent upon this Commission to say so. Otherwise, the Commission runs the risk of undermining the work of public utility commissions (PUCs) in other States that, often with the assistance of the State's Attorney General's office, have undertaken or will undertake thoroughgoing reviews of their local BOC's compliance with the requirements of section 271. A Commission decision that appears to sanction Oklahoma's level of scrutiny will endanger PUC efforts in other States to conduct more detailed reviews.

SBC's application is based on factual assertions regarding competitive conditions in Oklahoma markets -- assertions that have been contested by other parties in this proceeding -- and a narrow interpretation of section 271 that takes a minimalist view of the showing SBC must make to satisfy the statutory standards. These comments are not intended to take sides with respect to factual disputes, but instead set forth our views on the public policy considerations and legal principles the Commission should apply in considering SBC's application.

THE INTEREST OF THE STATES OF DELAWARE, FLORIDA, IOWA, MARYLAND, MASSACHUSETTS, MISSISSIPPI, MISSOURI, NEW YORK, NORTH DAKOTA, OKLAHOMA, UTAH, WEST VIRGINIA AND WISCONSIN

State Attorneys General have unique statutory responsibilities with respect to the development of an effective pro-competitive, deregulatory policy for telecommunications services. Attorneys General are the primary enforcers of state and federal antitrust laws at the State level and

have long represented the competitive interests of their States and citizens. We have actively represented these interests before this Commission and before our State PUCs to urge the implementation of effective policies to expand competition in all telecommunications markets. The significance of the Commission's actions on the development of local exchange competition in our States as well as the importance of effective regulatory review of BOCs' market-opening activities to the section 271 process prompt our participation in this proceeding.

THE SECTION 271 TEST FOR BOC ENTRY INTO IN-REGION, INTERLATA MARKETS

Sections 271(d)(3)(A) and (B) set forth a number of specific requirements for a BOC seeking interLATA authority. A BOC showing that these requirements have been satisfied is necessary but not sufficient for Commission approval of an application. Consistent with section 271(d)(3)(C), the Commission must also determine that "the requested authorization is consistent with the public interest, convenience, and necessity."

This statutory standard directs the Commission to consider not only the specific requirements set forth in the statute but also the broader goals that the requirements are intended to serve. We believe that the statutory language, considered as a whole, points toward an overall test for BOC entry into interLATA markets. In order to qualify for authority to provide in-region, interLATA service in a state, a BOC should be required to prove that there are no significant impediments to effective, full-scale entry into local exchange competition in the state.[1]

[1] In its Evaluation submitted in this proceeding, the U.S. Department of Justice states that in (continued...)

The best way to make this showing would be through proof that broad-based competitive entry into local exchange markets has been successful in the State. If broad-based entry into local exchange markets has not occurred in the State, that would not foreclose the possibility of approval of a section 271 application if the BOC can otherwise prove that there are no significant impediments to such entry.

Identification of an overall test for BOC entry into interLATA markets provides a focus to the section 271 requirements. It helps avoid the danger of interpreting those requirements as an unrelated series of minimal obligations that individually may seem consistent with the language of the statute but in combination fail to add up to a coherent and sensible test for measuring a BOC's market-opening activities.

As the following sections of these comments explain, our understanding of the overall test embodied in section 271 helps shape our views of the showings necessary to satisfy either the Track A or Track B requirements of the statute; the importance of evidence that a section 271 applicant provides nondiscriminatory access to its operational support systems; and the essential role of State PUCs in the section 271 application review process.

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[1](...continued)
evaluating whether granting a BOC's application for interLATA entry would be consistent with the public interest, the Department seeks to determine whether the BOC's local markets have been irreversibly opened to competition. As a practical matter, we do not perceive significant differences between this test and the one we describe.

THE APPROPRIATE TESTS UNDER TRACK A AND TRACK B

In order to qualify for in-region, interLATA authority, a BOC must provide or generally offer to competitive local exchange carriers (CLECs) all the services included in the competitive checklist set forth in sec. 271(c)(2)(B); structure its proposed interLATA operation in a way that complies with the separate affiliate requirements of section 272; and satisfy either the requirements set forth in section 271(c)(1)(A)(Track A) or section 271(c)(1)(B)(Track B).

A BOC following Track A must prove that it has entered into at least one PUC-approved interconnection agreement with an unaffiliated CLEC that is providing local service to residential and business subscribers either exclusively or predominantly over its own telephone exchange service facilities.

The purpose of the Track A requirements is to ensure that, at a minimum, competitive forces are actually beginning to have an impact in the local exchange markets and are starting to exert competitive discipline over the BOC. The assumption behind the Track A requirement is that once conditions are conducive to competitive entry into local service markets and the process of competitive entry commences, that process will continue and CLECs will become an increasingly significant presence in the market.

To satisfy the Track A requirements, the applicant BOC should show that competitive local exchange entry has begun and that standards for the BOC's dealings with the new entrants have been established. There is no metrics test that requires a showing of a specific level of market concentration on the part of CLECs in the State. But neither should it be sufficient for the BOC to

show that a CLEC is providing service to a handful of subscribers in the State if the CLEC's operations are so limited that no reliable inferences may be drawn about the feasibility of full scale competitive entry into local exchange markets in the State on the basis of such operations.

The Track B alternative for interLATA authority is considerably more limited. Track B is available to an applicant BOC if no unaffiliated CLEC has requested access and interconnection with the BOC in the State. Once a timely request for access and interconnection has been made, however, the BOC is precluded from relying upon Track B as a matter of right. Since unaffiliated CLECs have in fact requested access and interconnection from BOCs in all States, this avenue for interLATA authority is unavailable.

Track B also includes the additional provision that it may be invoked if the State PUC certifies that the only CLECs that have made requests for access or interconnection in the State have failed to negotiate interconnection agreements with the BOC in good faith, or have failed to comply, within a reasonable period of time, with the implementation schedule contained in their interconnection agreements. But as a general matter, Track B will be unavailable as a means of BOC in-region interLATA entry in a State from the time requests for interconnection and access were made until the implementation schedules included in interconnection agreements have been breached.

AN APPLICANT BOC'S OPERATIONS SUPPORT SYSTEMS MUST BE PROVEN ADEQUATE UNDER CONDITIONS OF ACTUAL COMPETITION

In reviewing compliance with the competitive checklist, the Commission should pay particular attention to the applicant BOC's efforts to provide nondiscriminatory access to its

operations support systems (OSS), which is a critical prerequisite to the development of effective local competition. OSS are the software interfaces and other systems BOCs put into place in order to provide CLECs access to information in the BOC's databases that the CLECs need in order to compete effectively. Nondiscriminatory access requires the implementation of OSS functions that are sufficiently comparable to what is available internally to the BOC that they do not present barriers to effective competition by CLECs.

CLECs need smooth and effective communications with the BOCs' databases in order to enable effective local exchange competition. If a BOC's OSS do not function well or break down, this will impede the CLEC's ability to service its customers, and the customer will blame the CLEC rather than the BOC. Attentive regulatory review of BOCs' efforts at providing nondiscriminatory access to OSS is necessary, since providing this sort of assistance to its competitors runs strongly counter to the natural competitive instincts of any business.

A BOC's OSS capabilities should be required to pass at least two tests before they are deemed to satisfy the competitive checklist. First, the BOC must demonstrate that the systems incorporate sufficient capacity to be able to handle the volumes of service reasonably anticipated when local competition has reached a mature state. Second, the BOC's OSS capabilities must be proven adequate in fact to handle the burdens placed upon them as local competition first takes root. Testing of the systems by the BOC is not enough to provide reasonable assurance that they will function as planned with the systems of CLECs. It will require some experience with the systems

on a day-to-day basis under conditions of genuine local competition in order to assess their adequacy on this measure.

Even if a BOC acts with the best of intentions, it seems likely that the necessarily complex OSS functions it designs and implements will require some shakedown and debugging period before they interact smoothly with the systems of CLECs. InterLATA approval should not be granted before the debugging has been successfully completed, since the prospect of such approval provides a strong incentive for the BOC to focus on this problem and devote the resources necessary to solve it.

It is also important that there be some accumulation of experience in a competitive environment before a section 271 application is approved so that the disputes that will inevitably arise about the scope of the BOC's interconnection obligations can be identified and addressed while the BOC still has a powerful incentive to resolve the dispute promptly.

Finally, some record of experience under conditions of local competition is necessary to reveal whether a BOC will engage in unfair or discriminatory practices to inhibit entry into local exchange services markets. As a provider of essential bottleneck facilities, BOCs retain considerable market power in local exchange markets. The importance of OSS is just one example of BOCs' competitive significance in these markets. BOC promises of compliance with statutory prohibitions against unfair and discriminatory practices must be confirmed in the course of confronting real and effective competition in the marketplace.

THE CRITICAL ROLE OF STATE PUC REVIEW OF BOC OPERATIONS

The section 271 application review process entails a substantial role for State PUCs. Among other requirements, the BOC has the burden of proving by credible evidence that it satisfies either Track A or Track B, and that it provides or generally offers access and interconnection services that fully comply with the competitive checklist set forth in section 271(c)(2)(B). Since the Commission must act on section 271 applications within 90 days, the administrative fact-finding proceedings to determine whether the BOC satisfies these requirements must necessarily take place at the State level. In addition, under section 271(d)(2)(B), the Commission must consult with the State PUC "in order to verify the compliance" of the BOC with the section 271 requirements.

Since the BOC has the burden of proof, it is in the BOC's interest that the state PUC has undertaken a thorough review of the BOC's section 271 compliance and reached a favorable conclusion. Without an adequate record developed at the state PUC through proceedings that include, as appropriate, the opportunity for the submission of evidence and cross-examination of witnesses, the applicant BOC will be severely challenged in the FCC proceeding to make the sort of evidentiary showing of compliance that the legislative scheme requires. Anticipating this need, a number of State PUCs have commenced proceedings to examine the status of their BOC's section 271 compliance, often with the participation of the State's Attorney General's office.

The Commission plays a critical role in supporting thorough and conscientious State reviews of BOC section 271 compliance. If the record of an application coming before the Commission includes favorable findings resulting from a comprehensive and exacting State PUC investigation of the BOC's compliance, then that should weigh heavily in the BOC's favor in the Commission's

determination. However, if an application comes before the Commission that is either not endorsed by the State PUC, or is supported only by a superficial and inadequate PUC proceeding that applies inappropriate standards or fails to establish a reliable evidentiary basis for its conclusions, then it becomes the responsibility of the Commission to reinforce the efforts of the many PUCs that are doing careful and thorough jobs of BOC compliance review by concluding that the BOC has failed in its burden of proof and rejecting the application.

The review by the Oklahoma Corporation Commission of SBC's section 271 compliance appears to fall well short of what is required. While the Commission held a hearing on SBC's compliance with the competitive checklist, SBC's witnesses were not made available for cross-examination. The Administrative Law Judge (ALJ) presiding at the hearing recommended that the Commission find that SBC has not satisfied the elements of the competitive checklist, a conclusion that was endorsed by the Commission staff and the Attorney General's office. For reasons that seem inadequately explained in the record, and over a strong dissent, a majority of the Commission overruled that ALJ's recommendation and found that SBC did meet the competitive checklist requirements. The Commission failed to support this conclusion with detailed findings as to each of the fourteen competitive checklist items.

If the Commission approves SBC's application on the state of this record, then the PUCs that have interpreted their section 271 review obligations as requiring a considerably more thorough review will confront questions from their BOCs as to why they are requiring more than the Commission deemed necessary when ruling on SBC's application. In order to avoid undermining

these other PUC efforts that are ultimately intended to improve the Commission's decision-making ability in section 271 application proceedings, the Commission should send the message that it does require more of SBC and the Oklahoma Commission by rejecting SBC's application.

THE SECTION 271 REVIEW PROCESS MUST BE FAIR TO APPLICANT BOCS

While SBC's application should be denied, there should be no presumption against approval of a properly-supported BOC application for in-region, interLATA authority. The goal of in-region interLATA entry must be reasonably achievable for BOCs. Only if it is will the prospect of approval continue to provide an incentive for BOCs to undertake the market-opening activities that the statute was intended to foster. In addition, there seems little doubt that BOC entry into long distance will be a procompetitive development, so long as BOCs are prevented from obtaining and exploiting unfair advantages from their dominant position in the local exchange markets. The approach that the Commission takes to the section 271 process should result in the rejection of applications by BOCs that have not done all the statute requires, but it should also result in the approval of applications by BOCs that have effectively opened their local exchange markets to competition.

CONCLUSION

The Commission should employ a broad, procompetitive conception of the public interest in considering SBC's application and subsequent BOC applications for authority to provide in-region, interLATA services. The Commission should approach its task in a way that supports the efforts of those State PUCs that have undertaken thoroughgoing reviews of their BOC's compliance with the requirements of the statute.

It should be applicant BOCs' burden to prove that there are no significant impediments to effective, full-scale entry into local exchange competition in the State. This is likely to require a showing of actual experience under local exchange competition sufficient to conclude that new entrants are able to compete on an equal footing with incumbent BOCs for the business of local exchange subscribers.

Respectfully submitted,

M. Jane Brady
Attorney General of Delaware

Robert A. Butterworth
Attorney General of Florida

Tom Miller
Attorney General of Iowa

J. Joseph Curran, Jr.
Attorney General of Maryland

Scott Harshbarger
Attorney General of Massachusetts

Mike Moore
Attorney General of Mississippi

Jeremiah W. Nixon
Attorney General of Missouri

Dennis C. Vacco
Attorney General of New York

Heidi Heitkamp
Attorney General of North Dakota

W.A. Drew Edmondson
Attorney General of Oklahoma

Jan Graham
Attorney General of Utah

Darrell V. McGraw, Jr.
Attorney General of West Virginia

James E. Doyle
Attorney General of Wisconsin

CERTIFICATE OF SERVICE

I, Emily Myers, certify that on May 27, 1997, I sent a true and correct copy of the attached Reply Comments of the Attorneys General of Delaware, Florida, Iowa, Maryland, Massachusetts, Mississippi, Missouri, New York, North Dakota, Oklahoma, Utah, West Virginia and Wisconsin filed in CC Docket No 97-121 to the persons on the attached service list.

Emily Myers

Emily Myers
Counsel for Antitrust and Health
National Association of Attorneys General

Service List

Richard Metzher, General Counsel
Association for Local Telecommunications Services
1200 19th Street, N.W.
Washington, D.C. 20036

John Lenahan
Ameritech Corporation
30 South Wacker Drive
Chicago, IL 60606

Mark Rosenblum
AT&T Corporation
295 North Maple Ave.
Basking Ridge, NJ 07920

Susan Miller, Esq.
ATIS
1200 G Street, N.W., Suite 500
Washington, D.C. 20005

James R. Young
Bell Atlantic
1320 N.Courthouse Road, 8th Floor
Arlington, VA 22201

Walter Alford
BellSouth
1155 Peachtree Street,N.E.
Atlanta, GA 30367

Edward J. Cadieux
Director, Regulatory Affairs- Central Region
Brooks Fiber Properties, Inc.
425 Woods Mill Road South
Town and Country, MO 63017

John Windhausen, Jr., General Counsel
Competition Policy Institute
1156 15th Street, N.W., Suite 310
Washington, D.C. 20005

Genevieve Morelli
Executive Vice President and General Counsel
The Competitive Telecommunications Association
1900 M Street, N.W., Suite 800
Washington, D.C. 20036

Laura Phillips
Dow, Lohnes, and Albertson, PLLC
1200 New Hampshire Ave., N.W., Suite 800
Washington, D.C. 20036
Cousel for Cox Communications

Russell M. Blau
Swidler & Berlin, chartered
3000 K Street, N.W. Suite 300
Washington, D.C. 20007-5116
Cousel for Dobson Wireless

Gregory M. Casey
LCI International Telecom Corp.
8180 Greensboro Drive, Suite 800
McLean, VA 22102

Rocky Unruh
Morgenstein & Jubelirer
One Market
Spear Street Tower, 32nd Floor
San Francisco, CA 94105
Counsel for LCI Telecom Group

Anthony Epstein
Jenner & Block
601 13th Street, N.W.
Washington, D.C. 20005
Counsel for MCI

Susan Jin Davis
MCI Telecommunications Corporation
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Daniel Brenner
National Cable Television Association
1724 Massachusetts Ave., N.W.
Washington, D.C. 20036

NYNEX Telephone Companies
Saul Fisher
1095 Ave. Of the Americas
New York, NY 10036

Cody L. Graves, Chairman
Oklahoma Corporation Commission
Jim thorpe Building
Post Office Box 52000-2000
Oklahoma City, OK 73152-2000

Mickey S. Moon
Assistant Attorney General
Oklahoma Attorney General's Office
2300 North Lincoln Boulevard
Room 112, State Capitol
Oklahoma City, OK 73152-2000

Robert Hoggarth
Senior Vice President, Paging and
Narrowband PCS Alliance
500 Montgomery Street, Suite 700
Alexandria, VA 22314-1561

James D. Ellis
Paul K. Mancini
SBC Communications, Inc.
175 E. Houston, Room 1260
San Antonio, TX 78205

Philip L. Verveer
Wilkie, Farr & Gallagher
1155 21st Street, N.W.
Washington, D.C. 20036
Counsel for Sprint

Richard Karre
US West
1020 19th Street, N.W., Suite 700
Washington, D.C. 20036

Charles D. Land, P.E., Executive Director
Texas Association of Long Distance
Telephone Companies
503 W. 17th Street, Suite 200
Austin, TX 78701-1236

David Poe
LeBoeuf, Lamb, Greene & MacRae, LLP
1875 Connecticut Ave., N.W.
Suite 1200
Washington, D.C. 20009
Counsel for Time Warner

Janis Stahlhut
Time Warner communications
Holdings, Inc.
300 First Stamford Place
Stamford, CT 06902-6732

Danny Adams
Kelley, Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
Counsel for USLD

Catherine Sloan
WorldCom, Inc.
1120 Connecticut Ave., N.W.
Washington, D.C. 20036-3902

Charles Hunter
Hunter Communications Law Group
1620 I Street, N.W. Suite701
Washington, D.C. 20006
Counsel for Telecommunications Resellers
Association